

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MONTEL PETTIFORD,

Petitioner,

v.

Case Number: 2:11-cv-12025
Honorable Patrick J. Duggan

CAROL HOWES,

Respondent.

/

**ORDER CONSTRUING HABEAS CORPUS PETITION
AS MOTION TO REOPEN PROCEEDINGS, DENYING MOTION,
CLOSING CASE FOR ALL PURPOSES, AND DECLINING TO ISSUE A
CERTIFICATE OF APPEALABILITY**

Petitioner Montel Pettiford, presently confined at the Oaks Correctional Facility in Manistee, Michigan, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on May 9, 2011. Petitioner is challenging the constitutionality of his first-degree premeditated murder conviction in 2008. On April 5, 2012, at Petitioner's request, the Court stayed the proceedings to allow Petitioner to exhaust his state court remedies. (ECF No. 4.) The Court administratively closed the case. On December 18, 2013, Petitioner filed a petition for a writ of habeas corpus.¹ The Court construes the petition for a writ of habeas

¹The petition was filed as a new case and assigned to the Honorable Bernard A. Friedman under case number 2:13-cv-15132. The 2013 case was reassigned to (continued...)

corpus as a motion to lift the stay.

In the April 5, 2012 decision granting Petitioner's motion to stay, the Court conditioned the stay upon Petitioner presenting his unexhausted claims to the state court within sixty days from the date of the order and— if Petitioner was unsuccessful in the state court and wished to proceed here— to file a motion to lift the stay and an amended petition within sixty days after the conclusion of state-court proceedings. Petitioner timely filed a motion for relief from judgment in the state court. The trial court denied the motion on June 22, 2012. *People v. Pettiford*, No. 07-21145 (Genesee Cnty. Cir. Ct. July 27, 2012). The Michigan Court of Appeals dismissed Petitioner's delayed application for leave to appeal on May 1, 2013 for failure to pursue the case in conformity with the rules. *People v. Pettiford*, No. 313819 (Mich. Ct. App. May 1, 2013). A search of the Michigan courts' public database of electronic court records shows no application for leave to appeal filed by Petitioner in the Michigan Supreme Court. Petitioner, therefore, has not exhausted his state court remedies.

Further, Petitioner waited approximately seven months to return to this Court after the conclusion of state-court proceedings. Petitioner therefore failed to

¹(...continued)
the undersigned district judge as a companion to this case. This Court then ordered the petition re-filed in this earlier-filed matter and dismissed the 2013 case.

comply with the terms of the stay and the Court declines to reopen these proceeding.

When a district judge issues a final order adverse to a habeas petitioner, it must decide whether to issue a certificate of appealability (“COA”). *See* Rule 11 of the Rules Governing § 2254 Cases; *see also* 28 U.S.C. § 2253. Section 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

The Supreme Court has provided that when a district court denies a habeas petition on the merits of the claims, a certificate may issue if the petitioner demonstrates that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 520 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000). However, when a district court denies habeas relief on procedural grounds without reaching the petitioner’s constitutional claims, a certificate may issue if the petitioner shows that jurists of reason would find it debatable whether (1) the petition states a valid claim of a denial of a constitutional right; and (2) the district court was correct in its procedural ruling. *Id.* at 484-85, 120 S. Ct. at 1604.

This Court is dismissing this matter on procedural grounds. The Court does not believe that jurists of reasons would find this procedural ruling incorrect.

Accordingly,

IT IS ORDERED that the petition for a writ of habeas corpus is construed as a motion to reopen proceedings and is **DENIED**;

IT IS FURTHER ORDERED, that this case is now closed for all purposes;

IT IS FURTHER ORDERED, that the Court declines to issue a certificate of appealability.

Dated: March 13, 2014

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

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AAG Anica Letica